Iowa Department of Natural Resources
Environmental Protection Commission

ITEM **16** **DECISION**

TOPIC **Final Rule: Air Quality Program Rules Chapters 20, 21, 22, and new Chapter 34: Adoption of the federal Clean Air Interstate Rule (CAIR).**

The Commission will be asked to approve amendments to Chapter 20, "Scope of Title—Definitions—Forms—Rules of Practice," Chapter 21, "Compliance," Chapter 22, "Controlling Pollution," and add new Chapter 34, "Provisions for Air Quality Emissions Trading Programs" of the 567 Iowa Administrative Code.

The purpose of the rule changes is to adopt the recently finalized federal Clean Air Interstate Rule (CAIR) into the state air quality rules. The rules will also make necessary updates and changes to existing air quality rules to implement CAIR.

Two public hearings were held, one on February 21, 2006, and a second on February 22, 2006. Two oral comments were presented at the hearing on February 21. No oral comments were presented at the hearing on February 22. Five written comments were received prior to the close of the public comment period. The public comment period closed on February 27, 2006. Responses to the oral and written comments are provided in the attached responsiveness summary.

In response to comments, the Department made corrections and clarifications to the final rules. These changes are noted below and in the preamble of that attached rulemaking.

On May 12, 2005, the U.S. Environmental Protection Agency (EPA) promulgated CAIR to address interstate transport of sulfur dioxide ($SO_{2)}$ and nitrogen oxide ($NO_{x)}$ emissions from eastern and midwestern states, including Iowa, which were found to contribute to unhealthy levels of fine particles and ozone in downwind states.

Iowa is currently in attainment for all national ambient air quality standards (NAAQS). Iowa is included in the CAIR provisions because EPA found that Iowa's emissions contribute to downwind nonattainment of air quality standards. As such, Iowa is required to meet EPA-prescribed emission targets for SO_2 and NO_x in two phases. The first phase begins in 2009. The second phase begins in 2015.

EPA provided two options by which affected states could adopt CAIR: 1) Adopt EPA "model" rules that require EGUs to participate in an EPA-administered interstate cap and trade program, or 2) Mandate emissions controls and cap emissions from one or more industry sectors.

In May, 2005, the Department convened a workgroup to assist with rulemaking activities related to the adoption CAIR. The majority of the workgroup members recommended that the Department adopt EPA's cap and trade program for regulating NO_x and SO_2 emissions from EGUs. The Iowa Sierra Club did not endorse the cap and trade recommendation, stating that it does not support a cap and trade approach to emissions reductions.

Under the cap and trade approach for CAIR, EPA allocates emissions allowance budgets to the state for NO_x emissions. CAIR SO_2 allowances are allocated by EPA to affected EGUs from the current allowances under the existing Acid Rain program. The state is responsible for allocating the initial NO_x allowances to CAIR-affected facilities. Each allowance is equal to one ton of emissions. Upon initial allocation of NO_x and SO_2 allowances, EGUs can then trade them through an EPA-managed trading program. Market forces determine the trade currency (allowance) values. At the end of each year, each affected EGU must hold one allowance for each ton of SO_2 or NO_x emitted.

After carefully reviewing the CAIR provisions, considering the recommendations from all workgroup members, and considering all public comments received during the public comment period, the Department is adopting EPA's cap and trade program for implementing CAIR. This approach is the appropriate method for meeting the federal requirements for reducing cumulative, regional emissions of NO_x and SO_2, and will meet EPA's goals for reducing interstate transport of these pollutants.

These final rules to implement CAIR will amend a number of the air quality rules. In particular, the Department is adopting a new Chapter 34 that will contain the emissions trading provisions for CAIR. It is expected that EPA will promulgate other regulations in the future that will use the cap and trade approach similar to CAIR for reducing air pollutant emissions. The creation of Chapter 34 for air emissions trading will facilitate having all of these similar provisions in one location in the air quality rules.

A number of minor corrections, updates and clarifications were made to the CAIR and Acid Rain program rules from the proposed rules listed in the Notice. EPA finalized federal amendments to CAIR and the Acid Rain program since the publication of the Notice. These federal amendments consisted of clarifications and technical corrections, and are thus being adopted in the final state rules for CAIR. In addition, an error in the definition of "tonnage" and an error in the federal amendment date for 40 CFR Part 76 are being corrected in the final rule. Items 4-22 consist of amendments that were not included in the Notice. Items 4-22 are adopted for the sole purpose of removing federal regulation amendment dates that are inconsistent with the amendments adopted under Item 3, and are no longer needed.

Additionally, some changes were made to the final rule from the Notice to clarify the Department's methodology for designating annual NO_x and ozone season NO_x allowances for "existing units" and "new units." The workgroup had recommended that a "new unit" does not become an "existing unit" unless revisions to these rules are made at a later date. In accepting the workgroup's recommendations, the Department inadvertently adopted by reference a portion of the federal regulations that would be inconsistent with this intent. EPA Region VII identified this inconsistency in comments that they provided during the public comment period.

EPA also provided comments stating that the proposed rules, as specified in the Notice, could be interpreted to indicate that the EPA Administrator, as manager of the annual NO_x and ozone season NO_x trading programs, could elect to record the allowances specified in the Department's allowance allocation tables indefinitely into the future, rather allocating the allowances only according to the minimum timing requirement's specified in the federal regulations. This was not the Department's intent.

To address these EPA comments, the Department is adopting clarifying language in the final rule to specify the allocation methodology for designating annual NO_x and ozone season NO_x allowances.

If the Commission approves these rules, they will be published in the Iowa Administrative Code on June 7, 2006 and will become effective on July 12, 2006.

An administrative rule fiscal impact statement is attached.

Christine Paulson
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Program Development Section, Air Quality Bureau
Memo date: April 25, 2006

ENVIRONMENTAL PROTECTION COMMISSION [567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby amends Chapter 20, "Scope of Title—Definitions—Forms—Rules of Practice," Chapter 21, "Compliance," Chapter 22, "Controlling Pollution," and new Chapter 34, "Provisions for Air Quality Emissions Trading Programs," Iowa Administrative Code.

The purpose of the rule changes is to adopt the recently finalized federal Clean Air Interstate Rule (CAIR) into the state air quality rules. The rules also make necessary updates and changes to existing air quality rules to implement CAIR.

The Notice of Intended Action was published in the Iowa Administrative Bulletin (IAB) on January 18, 2006, as ARC 4823B. Two public hearings were held, one on February 21, 2006, and a second on February 22, 2006. Two oral comments were presented at the hearing on February 21. No oral comments were presented at the hearing on February 22. Five written comments were received prior to the close of the public comment period. The public comment period closed on February 27, 2006.

The submitted comments and the Department’s response to the comments are summarized in a responsiveness summary available from the Department. These final rules have been modified from the proposed rules published under the Notice of Intended Action to address the public comments, and to make minor corrections, updates and clarifications, as detailed below.

On May 12, 2005, the U.S. Environmental Protection Agency (EPA) promulgated CAIR to address interstate transport of sulfur dioxide (SO_2) and nitrogen oxide (NO_x) emissions from eastern and midwestern states, including Iowa, which were found to contribute to unhealthy

levels of fine particles and ozone in downwind states. Fine particles and ozone are associated with thousands of premature deaths and illnesses each year. Additionally, these pollutants reduce visibility and damage sensitive ecosystems.

Iowa is currently in attainment for all national ambient air quality standards (NAAQS). Iowa is included in the CAIR provisions because EPA found that Iowa's emissions contribute to downwind nonattainment of air quality standards. As such, Iowa is required to meet EPA–prescribed emission targets for SO_2 and NO_x in two phases. The first phase begins in 2009. The second phase begins in 2015.

EPA determined that controlling NO_x and SO_2 emissions from fossil fuel–fired electric generating units (EGUs) to meet CAIR reduction goals was highly cost–effective. EPA provided two options for affected states to adopt CAIR: (1) adopt EPA regulations that require EGUs to participate in an EPA–administered interstate cap and trade program, or (2) mandate emissions controls and cap emissions from one or more industry sectors.

In May 2005, the Department convened a workgroup to assist with rule–making activities related to the adoption of CAIR. The workgroup's goal was to provide rule–making recommendations on the implementation options of the federal regulations. The Department invited the following parties to participate in the workgroup:

- Investor–owned, municipal and rural electric cooperative utilities;
- Iowa Association of Municipal Utilities and Iowa Utilities Association;
- Iowa Utilities Board and Consumer Advocate Office;
- Iowa's university power plants;
- Sierra Club and Iowa Environmental Council;
- Iowa Association of Business and Industry;

- Iowa Department of Economic Development;
- U.S. EPA Region VII; and
- DNR's Air Quality and Energy Bureaus.

The workgroup met five times between May and August 2005. All workgroup invitees, even those that elected not to participate in meetings, remained on the Department's E–mail distribution list and were kept informed of the workgroup's activities and meeting dates.

The majority of the workgroup members recommended that the Department adopt EPA's cap and trade program for regulating NO_x and SO_2 emissions from EGUs. The Iowa Sierra Club did not endorse the cap and trade recommendation, stating that it does not support a cap and trade approach to emissions reductions.

Under the cap and trade approach for CAIR, EPA allocates emissions allowance budgets to the state for NO_x emissions. CAIR SO_2 allowances are allocated by EPA to affected EGUs from the current allowances under the existing acid rain program. The state is responsible for allocating the NO_x allowances to CAIR–affected facilities. Each allowance is equal to one ton of emissions. Upon allocation of NO_x and SO_2 allowances, EGUs can then trade them through an EPA–managed trading program. Market forces determine the trade currency (allowance) values. At the end of each year, each affected EGU must hold one allowance for each ton of SO_2 or NO_x emitted.

Adopting the cap and trade approach to CAIR offers several advantages. The affected facilities (EGUs) are allowed the flexibility to determine the most appropriate method of compliance by securing allowances, reducing emissions, or instituting some combination of these approaches. The affected EGUs must still comply with CAIR's requirements for continuous emissions monitoring for NO_x and SO_2.

The EPA–managed trading program also establishes automatic and punitive penalties on facilities that do not hold the required number of allowances at the end of each year. Further, states that adopt EPA's cap and trade program to implement CAIR are afforded "automatic approval" of the required revisions to their state implementation plans (SIPs). Iowa has until September 11, 2006 to adopt CAIR and submit the revisions for incorporation into Iowa's SIP.

After carefully reviewing the CAIR provisions and considering the recommendations from all workgroup members, and the public comments submitted during the public comment period for the Notice, the Department is adopting EPA's cap and trade program for implementing CAIR. This approach is the appropriate method for meeting the federal requirements for reducing cumulative, regional emissions of NO_x and SO_2 and will meet EPA's goals for reducing interstate transport of these pollutants.

These amendments to implement CAIR will amend a number of the air quality rules. The federal CAIR regulations established some new requirements for emissions inventories, which the Department is adopting in Chapter 21. The federal CAIR regulations also amended several of the acid rain program definitions. The Department is amending the state acid rain rules in Chapter 22 to adopt the federal definitions by reference, while retaining the definitions specific to Iowa's acid rain program.

Additionally, the Department is adopting a new Chapter 34 containing the emissions trading provisions for CAIR. It is expected that EPA will promulgate other regulations in the future that will use the cap and trade approach similar to that of CAIR for reducing air pollutant emissions. The creation of Chapter 34 for air emissions trading will facilitate having all of these similar provisions in one location in the Iowa Administrative Code.

The Department is simultaneously adopting separate, similar amendments to implement the Clean Air Mercury Rule (CAMR). CAIR and CAMR are closely related because both allow primary implementation through an EPA–administered emissions cap and trade program. However, the Department proposed the CAIR and CAMR Notices of Intended Action separately in the event one of the rule makings was delayed or terminated.

Item 1 amends rule 567—20.1(455B,17A) to add information about the content of Chapters 31, 32 and 34.

Item 2 adopts new subrule 21.1(4) to add the requirement for emissions sources to submit emissions inventories related to emissions of SO_2 and NO_x upon the Director's written request. This change is being made to implement the emissions inventory provisions of CAIR, which require the Department to compile and maintain an emissions inventory of these pollutants. The new subrule is similar to the existing emissions inventory requirements under 567—21.3(455B). Because the information required for CAIR is program–specific, and is more comprehensive than previous federal emissions inventory requirements, the Department proposes a distinct subrule for these requirements.

Item 3 rescinds rule 567—22.120(455B), the listing of definitions for the acid rain program, and adopts the federal definitions by reference, while retaining the definitions specific to Iowa's acid rain program. This change is being made to accommodate the amendments that EPA made to the federal acid rain program definitions to implement CAIR. In adopting the federal definitions by reference, the Department will not need to continually update the text in the state's rules when EPA makes changes to the federal regulations. The listed definitions in the final rule are specific to Iowa's acid rain program or serve to further simplify updating the acid rain program rules. The Department is adopting acid rain program definitions for 40 CFR

Parts 72 through 78 that will cover all references to these federal regulations and the amendment dates.

The Department, in response to public comment, made minor corrections and updates to Item 3. An error in the definition of "tonnage" is corrected in the final rule. The definition is corrected back to the definition contained in existing state rules for the Acid Rain program. An error in the federal amendment date for 40 CFR Part 76 is also corrected. EPA did not amend Part 76 in the federal promulgation of CAIR, so the date is corrected back to the most current federal amendment date of October 15, 1999. Additionally, the federal amendment dates for 40 CFR Parts 72, 73, 74, and 78 are updated in the final rule to reflect EPA's recent amendments to the Acid Rain program and CAIR. These federal amendments were published in the Federal Register on April 27, 2006, after the Notice was published. Since these recent federal amendments consisted only of clarifications and technical corrections, these federal provisions are adopted in the final rules.

Items 4-22 consist of amendments that were not included in the Notice. Items 4-22 are adopted for the sole purpose of removing federal regulation amendment dates that are inconsistent with the amendments adopted under Item 3, and are no longer needed. The amendments adopted in Item 3 encompass the federal regulation amendment dates for 40 CFR Parts 72, 73, 74, 75, 76, 77, and 78.

Item 23 adopts a new 567—Chapter 34 to set forth the provisions for air quality emissions trading programs. The provisions in this chapter include the NO_x and SO_2 emissions cap and trade requirements for CAIR.

In general, the federal regulations for a NO_x and SO_2 emissions cap and trade program are adopted by reference. The rules do include several sections of the federal regulations that are not

adopted by reference. Additionally, the federal amendment dates for 40 CFR Part 96 are updated in the final rule to reflect EPA's recent changes to the federal CAIR provisions. These federal amendments were published in the Federal Registers on April 27, 2006, after the Notice was published. Since these recent federal amendments consisted only of clarifications and technical corrections, these federal provisions are adopted in the final rules.

The provisions of Chapter 34 include the total state trading budgets for Iowa for annual NO_x allowances. The rules include four tables showing the annual allowance allocations to each designated CAIR unit for annual NO_x and ozone season NO_x, for existing units and new units. The Department adopts the federal provisions for determining the allowance allocations. Upon annual allocation, the designated units may track, transfer, bank and record the allowances, as specified in the federal regulations adopted by reference. EPA will be the designated authority for implementing these components of the CAIR cap and trade program.

The Department adopts the federal provisions for classifying existing units and new units. However, the Department, upon recommendation from the workgroup members, allocates the annual allowances for all new units at the time that Chapter 34 is adopted. A "new unit" is always considered to be a "new unit," and does not become an "existing unit" unless revisions to these rules are made at a later date. The Notice preamble included an explanation of this methodology, as well as annual NO_x and ozone season NO_x allowance allocation tables in the rule text that illustrated this methodology. However, in the Notice, the Department inadvertently proposed to adopt by reference a portion of the federal regulations that would be inconsistent with this intent. EPA Region VII identified this inconsistency in comments that they provided during the public comment period.

EPA also provided comments stating that the proposed rules, as specified in the Notice, could be interpreted to indicate that the EPA Administrator, as manager of the annual NO_x and ozone season NO_x trading programs, could elect to record the allowances specified in the Department's allowance allocation tables indefinitely into the future, rather allocating the allowances only according to the minimum timing requirement's specified in the federal regulations. This was not the Department's intent.

To address these EPA comments, the Department is adopting clarifying language in the final rule to specify the allocation methodology for designating annual NO_x and ozone season NO_x allowances for "existing units" and "new units." The language in the final rule is consistent with the federal regulations, except that the language clarifies that allowances will be allocated in future years only to meet the minimum timing requirements specified in the federal regulations. Additionally, the language in the final rule does not include the portions of the federal regulations which contain the methodology specifying how a "new unit" automatically becomes and "existing unit" over time. The language in the final rule is adopted in lieu of adopting by reference the applicable portions of 40 CFR 96.142 and 96.342. Under EPA's regulations, the states have full discretion and flexibility to decide the initial allowance allocations.

These amendments are intended to implement Iowa Code section 455B.133. These amendments become effective on July 12, 2006.

The following amendments are adopted.

ITEM 1. Amend rule **567—20.1(455B,17A)**, second unnumbered paragraph, as follows:

Chapter 21 contains the provisions requiring compliance schedules, allowing for variances, and setting forth the emission reduction program. Chapter 22 contains the standards and procedures for the permitting of emission sources and the special requirements for nonattainment areas. Chapter 23 contains the air emission standards for contaminants. Chapter 24 provides for the reporting of excess emissions and the equipment maintenance and repair requirements. Chapter 25 contains the testing and sampling requirements for new and existing sources. Chapter 26 identifies air pollution emergency episodes and the preplanned abatement strategies. Chapter 27 sets forth the conditions political subdivisions must meet in order to secure acceptance of a local air pollution control program. Chapter 28 identifies the state ambient air quality standards. Chapter 29 sets forth the qualifications for an observer for reading visible emissions. Chapter 31 contains the conformity of general federal actions to the Iowa state implementation plan or federal implementation plan. Chapter 32 specifies requirements for conducting the animal feeding operations field study. Chapter 34 contains provisions for air quality emissions trading programs.

ITEM 2. Adopt **new** subrule 21.1(4) as follows:

21.1(4) Emissions inventory to fulfill requirements of the Clean Air Interstate Rule (CAIR). Upon the director's written request, the owner or operator shall provide information on fuel use, materials processed, air contaminants emitted, estimated rate of emissions, periods of emission or other air pollutant information related to the emissions of SO_2 and NO_x. The information requested shall be submitted on forms supplied by the department. The information shall be used by the department in compiling and maintaining an emissions inventory to fulfill the reporting requirements under 40 CFR 51.125 as amended through May 12, 2005.

ITEM 3. Rescind rule 567—22.120(455B) and adopt the following **new** rule in lieu thereof:

567—22.120(455B) Acid rain program—definitions. The terms used in rules 22.120(455B) through 22.147(455B) shall have the meanings set forth in Title IV of the Clean Air Act, 42 U.S.C. 7401, et seq., as amended through November 15, 1990, and in this rule. The definitions set forth in 40 CFR Part 72 as amended through April 27, 2006, and 40 CFR Part 76 as amended through October 15, 1999, are adopted by reference.

"40 CFR Part 72," or any cited provision therein, shall mean 40 Code of Federal Regulations Part 72, or the cited provision therein, as amended through April 27, 2006.

"40 CFR Part 73," or any cited provision therein, shall mean 40 Code of Federal Regulations Part 73, or the cited provision therein, as amended through April 27, 2006.

"40 CFR Part 74," or any cited provision therein, shall mean 40 Code of Federal Regulations Part 74, or the cited provision therein, as amended through April 27, 2006.

"40 CFR Part 75," or any cited provision therein, shall mean 40 Code of Federal Regulations Part 75, or the cited provision therein, as amended through May 18, 2005.

"40 CFR Part 76," or any cited provision therein, shall mean 40 Code of Federal Regulations Part 76, or the cited provision therein, as amended through October 15, 1999.

"40 CFR Part 77," or any cited provision therein, shall mean 40 Code of Federal Regulations Part 77, or the cited provision therein, as amended through May 12, 2005.

"40 CFR Part 78," or any cited provision therein, shall mean 40 Code of Federal Regulations Part 78, or the cited provision therein, as amended through April 27, 2006.

"Acid rain permit" means the legally binding written document, or portion of such document, issued by the department (following an opportunity for appeal as set forth in 561—

Chapter 7, as adopted by reference at 567—Chapter 7), including any permit revisions, specifying the acid rain program requirements applicable to an affected source, to each affected unit at an affected source, and to the owner and operators and the designated representative of the affected source or the affected unit.

"Department" means the department of natural resources and is the state acid rain permitting authority.

"Draft acid rain permit" means the version of the acid rain permit, or the acid rain portion of a Title V operating permit, that the department offers for public comment.

"Permit revision" means a permit modification, fast–track modification, administrative permit amendment, or automatic permit amendment, as provided in rules 22.140(455B) through 22.144(455B).

"Proposed acid rain permit" means the version of the acid rain permit that the department submits to the Administrator after the public comment period, but prior to completion of the EPA permit review under 40 CFR 70.8(c) as amended through July 21, 1992.

"Title V operating permit" means a permit issued under rules 22.100(455B) through 22.116(455B) implementing Title V of the Act.

"Ton" or "tonnage" means any short ton (i.e., 2,000 pounds). For purposes of determining compliance with the acid rain emissions limitations and reduction requirements, total tons for a year shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions) in accordance with rule 567— 25.2(455B), with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed not equal to a ton.

ITEM 4. Amend paragraph 22.122(1)"a" as follows:

a. A unit listed in Table 1 of 40 CFR 73.10(a) ~~(as amended through September 28, 1998)~~.

ITEM 5. Amend paragraph 22.122(1)"b" as follows:

b. An existing unit that is identified in Table 2 or 3 of 40 CFR 73.10 ~~as amended through September 28, 1998~~, and any other existing utility unit, except a unit under subrule 22.122(2).

ITEM 6. Amend subrule 22.122(3) as follows:

22.122(3) A certifying official of any unit may petition the administrator for a determination of applicability under 40 CFR 72.6(c) ~~as amended through March 1, 2001~~. The administrator's determination of applicability shall be binding upon the department, unless the petition is found to have contained significant errors or omissions.

ITEM 7. Amend rule **567—22.123(455B)** as follows:

567—22.123(455B) Acid rain exemptions.

22.123(1) New unit exemption. The new unit exemption, as specified in 40 CFR §72.7 ~~as amended through March 1, 2001~~, except for 40 CFR §72.7(c)(1)(i), is adopted by reference. This exemption applies to new utility units.

22.123(2) Retired unit exemption. The retired unit exemption, as specified in 40 CFR §72.8 ~~as amended through December 18, 1997~~, is adopted by reference. This exemption applies to any affected unit that is permanently retired.

22.123(3) Industrial utility-unit exemption. The industrial utility-unit exemption, as specified in 40 CFR §72.14 ~~as amended through October 24, 1997~~, is adopted by reference. This exemption applies to any noncogeneration utility unit.

ITEM 8. Amend subparagraph 22.125(3)"a"(1) as follows:

(1) Hold allowances, as of the allowance transfer deadline, in the unit's compliance subaccount (after deductions under 40 CFR 73.34(c) ~~as amended through December 11, 1998~~)

not less than the total annual emissions of sulfur dioxide for the previous calendar year from the unit; and

ITEM 9. Amend subrule 22.125(4) as follows:

22.125(4) Nitrogen oxides requirements. The owners and operators of the source and each affected unit at the source shall comply with the applicable acid rain emissions limitation for nitrogen oxides, as specified in 40 CFR Sections 76.5 and 76.7 ~~as amended through December 19, 1996~~; 76.6 ~~as amended through October 15, 1999~~; and 76.8, 76.11, 76.12, and 76.15 ~~as amended through December 19, 1996~~; or by alternative emission limitations provided for by 40 CFR 76.10 ~~as amended through December 19, 1996~~, as long as the alternative emission limitation has been petitioned and demonstrated according to 40 CFR 76.14 ~~as amended through April 13, 1995~~, and approved by the department.

ITEM 10. Amend subrule 22.125(5) as follows:

22.125(5) Excess emissions requirements.

a. The designated representative of an affected unit that has excess emissions in any calendar year shall submit a proposed offset plan to the administrator, as required under 40 CFR Part 77 ~~as amended through October 24, 1997~~, and submit a copy to the department.

b. The owners and operators of an affected unit that has excess emissions in any calendar year shall:

(1) Pay to the administrator without demand the penalty required, and pay to the administrator upon demand the interest on that penalty, as required by 40 CFR Part 77 ~~as amended through October 24, 1997~~; and

(2) Comply with the terms of an approved offset plan, as required by 40 CFR Part 77 ~~as amended through October 24, 1997~~.

ITEM 11. Amend subparagraph 22.125(6)"a"(1) as follows:

(1) The certificate of representation for the designated representative for the source and each affected unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation, in accordance with 40 CFR 72.24~~ as amended through October 24, 1997~~; provided that the certificate and documents shall be retained on site at the source beyond such five-year period until such documents are superseded because of the submission of a new certificate of representation changing the designated representative.

ITEM 12. Amend subrule 22.126(1) as follows:

22.126(1) The designated representative shall submit a certificate of representation, and any superseding certificate of representation, to the administrator in accordance with Subpart B of 40 CFR Part 72~~ as amended through October 24, 1997~~, and, concurrently, shall submit a copy to the department. Whenever the term "designated representative" is used in this rule, the term shall be construed to include the alternate designated representative.

ITEM 13. Amend subrule 22.127(1) as follows:

22.127(1) Except as provided in 40 CFR 72.23~~ as amended through January 11, 1993~~, no objection or other communication submitted to the administrator or the department concerning the authorization, or any submission, action or inaction, of the designated representative shall affect any submission, action, or inaction of the designated representative, or the finality of any decision by the department, under the acid rain program. In the event of such communication, the department is not required to stay any submission or the effect of any action or inaction under the acid rain program.

ITEM 14. Amend rule **567—22.131(455B)** as follows:

567—22.131(455B) Acid rain compliance plan and compliance options—general.

22.131(1) For each affected unit included in an acid rain permit application, a complete compliance plan shall include:

a. For sulfur dioxide emissions, a certification that, as of the allowance transfer deadline, the designated representative will hold allowances in the unit's compliance subaccount (after deductions under 40 CFR 73.34(c) ~~as amended through December 11, 1998~~) not less than the total annual emissions of sulfur dioxide from the unit. The compliance plan may also specify, in accordance with rule 22.131(455B), one or more of the acid rain compliance options.

b. For nitrogen oxides emissions, a certification that the unit will comply with the applicable limitation established by subrule 22.125(4) or shall specify one or more acid rain compliance options, in accordance with Section 407 of the Act, and 40 CFR Section 76.9 ~~as amended through April 13, 1995~~.

ITEM 15. Amend subrule 22.138(4) as follows:

22.138(4) No acid rain permit including a draft or proposed permit shall be issued unless the administrator has received a certificate of representation for the designated representative of the source in accordance with Subpart B of 40 CFR Part 72 ~~as amended through October 24, 1997~~.

ITEM 16. Amend paragraph 22.139(4)"e" as follows:

e. The terms of a certificate of representation submitted by a designated representative under Subpart B of 40 CFR Part 72 ~~as amended through October 24, 1997~~.

ITEM 17. Amend subrule 22.140(4) as follows:

22.140(4) Any determination or interpretation by the state (including the department or a state court) modifying or voiding any acid rain permit provision shall be subject to review by the administrator in accordance with 40 CFR 70.8(c) ~~as amended to July 21, 1992~~, as applied to

permit modifications, unless the determination or interpretation is an administrative amendment approved in accordance with rule 22.143(455B).

ITEM 18. Amend paragraph 22.143(2)"b" as follows:

b. Changes in the designated representative or alternative designated representative; provided that a new certificate of representation is submitted to the administrator in accordance with Subpart B of 40 CFR Part 72 ~~as amended through October 24, 1997~~;

ITEM 19. Amend paragraph 22.143(2)"e" as follows:

e. Changes in the owners or operators; provided that a new certificate of representation is submitted within 30 days to the administrator and the department in accordance with Subpart B of 40 CFR ~~Part 72 as amended through October 24, 1997~~;

ITEM 20. Amend subrule 22.144(2) as follows:

22.144(2) Incorporation of an offset plan that has been approved by the administrator under 40 CFR Part 77 ~~as amended through October 24, 1997~~.

ITEM 21. Amend subrule 22.146(1) as follows:

22.146(1) Applicability and deadline. For each calendar year in which a unit is subject to the acid rain emissions limitations, the designated representative of the source at which the unit is located shall submit to the administrator and the department, within 60 days after the end of the calendar year, an annual compliance certification report for the unit in compliance with 40 CFR 72.90 ~~as amended through May 26, 1999~~.

ITEM 22. Amend **567—22.148(455B)** as follows:

567—22.148(455B) Sulfur dioxide opt-ins. The department adopts by reference the provisions of 40 CFR Part 74, Acid Rain Opt-Ins~~, as amended through March 1, 2001~~.

ITEM 23. Adopt **new** 567—Chapter 34 as follows:

CHAPTER 34
PROVISIONS FOR AIR QUALITY
EMISSIONS TRADING PROGRAMS

567—34.1(455B) Purpose. This chapter implements the provisions for certain federal air emissions trading programs to control emissions of specific pollutants.

567—34.2 to **34.199** Reserved.

567—34.200(455B) Provisions for air emissions trading and other requirements for the Clean Air Interstate Rule (CAIR). The CAIR regulations contained in 40 CFR Part 96 are adopted as indicated in rules 567—34.200(455B) through 567—34.229(455B). Additional provisions for CAIR are set forth in 567—subrule 21.1(4), emissions inventory requirements, and in rules 567—22.120(455B) through 567—22.123(455B), acid rain program requirements.

567—34.201(455B) CAIR NO_x annual trading program general provisions. The provisions in 40 CFR Part 96, Subpart AA (96.101 through 96.108), as amended through April 27, 2006, are adopted by reference, except that the definition of "permitting authority" in 96.102 shall mean the department of natural resources. Other terms contained in rules 567— 34.200(455B) through 567—34.209(455B), and in Tables 1A and 1B, shall have the meanings set forth in 96.102.

567—34.202(455B) CAIR designated representative for CAIR NO_x sources. The provisions in 40 CFR Part 96, Subpart BB, as amended through April 27, 2006, are adopted by reference.

567—34.203(455B) Permits. The provisions in 40 CFR Part 96, Subpart CC, as amended through April 27, 2006, are adopted by reference.

567—34.204 Reserved.

567—34.205(455B) CAIR NO_x allowance allocations. These provisions in 40 CFR Part 96, Subpart EE, 96.141 and 96.143, as amended through April 27, 2006, are adopted by reference, except as indicated in this rule.

34.205(1) State trading budget. The provisions in 40 CFR 96.140 are not adopted by reference. The state's trading budget for annual allocations of CAIR NO_x allowances for each control period from 2009 through 2014 is 32,692 tons. The state's trading budget for annual allocations of CAIR NO_x allowances for each control period, starting in 2015, and for each control period thereafter, is 27,243 tons.

34.205(2) CAIR NO_x allowance allocations. The provisions in 40 CFR 96.142 are not adopted by reference. The provisions in this subrule for CAIR NO_x allowance allocations are adopted in lieu thereof.

a. The baseline heat input used with respect to CAIR NO_x allowance allocations under paragraph "b" of this subrule for each CAIR NO_x unit will be:

(1) For units commencing operation before January 1, 2001 (existing units), the average of the three highest amounts of the units' adjusted control period heat input (in mmBTU) for 2000 through 2004, with the adjusted control period heat inputs for each year calculated as follows:

1. If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 100 percent;

2. If the unit is oil-fired during the year, the unit's control period heat input for such year is multiplied by 60 percent; and

3. If numbered paragraphs "1" and "2" are not applicable to the unit, the unit's control period heat input for such year is multiplied by 40 percent.

(2) For units commencing operation on or after January 1, 2001 and commencing construction before January 1, 2006 (new units), the nameplate capacity of the generator being served, provided that if a generator is served by two or more units, then the nameplate capacity will be attributed to each unit in equal fraction of the total nameplate capacity, multiplied by:

1. 7900 BTU/kW, if the unit is coal-fired for the year; or

2. 6675 BTU/kW, if the unit is not coal-fired for the year.

b.(1) For each control period in 2009 and thereafter, but for no control period later than that control period required to meet the minimum timing requirements specified in 40 CFR 96.141(a) and 96.141(b), the department will allocate to all CAIR NO_x units with a baseline heat input as determined in subparagraph "a"(1) for existing units a total amount of CAIR NO_x allowances equal to 95 percent for each control period from 2009 through 2014, and 97 percent for each control period 2015 and thereafter, of the tons of NO_x emissions in the state trading budget specified in subrule 34.205(1).

(2) The department will allocate CAIR NO_x allowances to each CAIR NO_x unit under subparagraph "b"(1) for existing units in an amount determined by multiplying the total amount of CAIR NO_x allowances allocated under subparagraph "b"(1) by the ratio of the baseline heat input of such a CAIR NO_x unit to the total amount of baseline heat input of all such CAIR NO_x units and rounding to the nearest whole allowance as appropriate.

c.(1) For each control period in 2009 and thereafter, but for no control period later than is required to meet the minimum timing requirements set forth in 40 CFR 96.141(a) and 96.141(b), the department will allocate to all CAIR NO_x units with a baseline heat input as determined in subparagraph "a"(2) for new units a total amount of CAIR NO_x allowances equal to 5 percent for each control period from 2009 through 2014, and 3 percent for each control period in 2015 and

thereafter, of the tons of NOx emissions in the state trading budget as specified in subrule 34.205(1).

(2) The department will allocate CAIR NO_x allowances to each CAIR NO_x unit under subparagraph "c"(1) for new units in an amount determined by multiplying the total amount of CAIR NO_x allowances allocated under subparagraph "c"(1) by the ratio of the baseline heat input of such a CAIR NO_x unit to the total amount of baseline heat input of all such CAIR NO_x units and rounding to the nearest whole allowance as appropriate.

d. The unit allocations of CAIR NO_x allowances described in subparagraphs "b"(2) and "c"(2) are set forth in Tables 1A and 1B. Upon allocation, allowances may be tracked, transferred, banked and recorded as specified under 40 CFR 96.150 through 96.162, as amended through April 27, 2006.

Table 1A. Annual NO_x Allocations for Existing Units in Tons Per Year

Facility ID	County	Unit ID	2009 – 2014	2015 and thereafter
Ames	Story	7	100	85
Ames	Story	8	351	299
Burlington Generating Station	Des Moines	1	1151	979
Cedar Falls Gas Turbine	Black Hawk	1	0	0
Cedar Falls Gas Turbine	Black Hawk	2	0	0
Council Bluffs Energy Center	Pottawattamie	1	307	261
Council Bluffs Energy Center	Pottawattamie	2	461	392
Council Bluffs Energy Center	Pottawattamie	3	4138	3521
Dubuque Generation Station	Dubuque	1	211	179
Dubuque Generation Station	Dubuque	5	145	123
Dubuque Generation Station	Dubuque	6	21	18
Earl F Wisdom Generation Station	Clay	1	75	64
Electrifarm Turbines	Black Hawk	GT1	7	6
Electrifarm Turbines	Black Hawk	GT2	8	7
Electrifarm Turbines	Black Hawk	GT3	8	7
Fair Station	Muscatine	2	205	174
George Neal North	Woodbury	1	765	651
George Neal North	Woodbury	2	1426	1213
George Neal North	Woodbury	3	2690	2289
George Neal South	Woodbury	4	3530	3004
Lansing Generating Station	Allamakee	1	5	5
Lansing Generating Station	Allamakee	2	13	11
Lansing Generating Station	Allamakee	3	161	137
Lansing Generating Station	Allamakee	4	1165	991
Lime Creek Combustion Turbines Station	Cerro Gordo	**1	3	2

Lime Creek Combustion Turbines Station	Cerro Gordo	**2	2	2
Louisa Station	Muscatine	101	3945	3357
Marshalltown	Marshall	**1	4	4
Marshalltown	Marshall	**2	7	6
Marshalltown	Marshall	**3	5	5
Milton L Kapp Generating Station	Clinton	2	1089	926
Muscatine	Muscatine	8	488	415
Muscatine	Muscatine	9	959	816
North Centerville Combustion Turbines	Appanoose	**1	1	1
North Centerville Combustion Turbines	Appanoose	**2	1	1
Ottumwa Generating Station	Wapello	1	4168	3547
Pella Station	Marion	6	69	59
Pella Station	Marion	7	71	60
Pella Station	Marion	8	0	0
Pleasant Hill	Polk	GT1	1	1
Pleasant Hill	Polk	GT2	1	1
Pleasant Hill	Polk	GT3	5	4
Prairie Creek Generating Station	Linn	3	317	270
Prairie Creek Generating Station	Linn	4	771	656
Riverside Station	Scott	9	591	502
Sixth Street Generating Station	Linn	2	118	100
Sixth Street Generating Station	Linn	3	124	106
Sixth Street Generating Station	Linn	4	93	79
Sixth Street Generating Station	Linn	5	198	169
Streeter Station	Black Hawk	7	105	89
Summit Lake Facility	Union	1G	5	4
Summit Lake Facility	Union	2G	6	5
Sutherland Generating Station	Marshall	1	211	180
Sutherland Generating Station	Marshall	2	213	181
Sutherland Generating Station	Marshall	3	529	450
Sycamore Turbines	Polk	GT1	6	5
Sycamore Turbines	Polk	GT2	8	7

**Denotes an affected unit for which the unit ID is unavailable.

Table 1B. Annual NO_x Allocations for New Units in Tons Per Year

Facility ID	County	Unit ID	2009 – 2014	2015 and thereafter
Ames	Story	GT2	52	26
Council Bluffs Energy Center	Pottawattamie	4	713	356
Earl F Wisdom Generation Station	Clay	2	73	36
Emery Station	Cerro Gordo	11	130	65
Emery Station	Cerro Gordo	12	130	65
Emery Station	Cerro Gordo	13	187	93
Exira Station	Audubon	CT U–1	38	19
Exira Station	Audubon	CT U–2	38	19
Greater Des Moines Energy Center	Polk	GT1	137	69
Greater Des Moines Energy Center	Polk	GT2	137	69

34.205(3) Compliance supplement pool. In addition to the CAIR NO_x trading budget specified in subrule 34.205(1), and the allocations specified in subrule 34.205(2), the department may allocate to CAIR NO_x units for the control period in 2009 up to 6,978 CAIR NO_x

allowances from the state's compliance supplement pool. The allocation criteria set forth in 40 CFR 96.143, as amended through April 27, 2006, specifying requirements for affected units to request such allowances and for the department to allocate such allowances, are adopted by reference.

a. Public notice and public participation. The department shall provide public notice and an opportunity for public comments, including an opportunity for a hearing, before allocating allowances from the compliance supplement pool.

b. Public notice requirements. For purposes of this rule, the department shall give notice in a format designed to give general public notice including, but not limited to, electronic mail listserver, the department's official Web site, or a press release. The public notice shall include the following:

(1) Identification of the source requesting the allowances.

(2) Name and address of the requester.

(3) The number of allowances requested.

(4) The reason for the request.

(5) The time and place of any possible public hearing.

(6) A statement that any person may submit written comments or may request a public hearing, or both, on the proposed allowance allocation.

(7) A statement of the procedures to request a public hearing.

(8) The name, address and telephone number of a person from whom additional information may be obtained.

(9) Locations where copies of the complete allowance request and the department's proposed allowance allocation may be reviewed, including the nearest department office, and the times at which the copies will be available for public inspection.

c. At least 30 days shall be provided for public comment. Notice of any public hearing shall be given at least 30 days in advance of the hearing.

d. The department shall keep a record of the commenters and the issues raised during the public participation process and shall prepare written responses to all comments received.

e. At the time that the department submits to the Administrator the final allowance allocations from the compliance supplement pool, the record and copies of the department's responses shall be made available to the public.

567—34.206(455B) CAIR NO_x allowance tracking system. The provisions in 40 CFR Part 96, Subpart FF, as amended through April 27, 2006, are adopted by reference.

567—34.207(455B) CAIR NO_x allowance transfers. The provisions in 40 CFR Part 96, Subpart GG, as amended through May 12, 1005, are adopted by reference.

567—34.208(455B) Monitoring and reporting. The provisions in 40 CFR Part 96, Subpart HH, as amended through April 27, 2006, are adopted by reference.

567—34.209(455B) CAIR NO_x opt–in units. The provisions in 40 CFR Part 96, Subpart II, as amended through April 27, 2006, are adopted by reference.

567—34.210(455B) CAIR SO_2 trading program. The provisions in 40 CFR Part 96, Subparts AAA through III, as amended through April 27, 2006, are adopted by reference, except that the definition of "permitting authority" contained in 96.202 shall mean the department of natural resources.

567—34.211 to **34.219** Reserved.

567—34.220(455B) CAIR NO_x ozone season trading program. The provisions in 40 CFR Part 96, Subparts AAAA through IIII are adopted as indicated in rules 567—34.221(455B) through 567— 34.229(455B).

567—34.221(455B) CAIR NO_x ozone season trading program general provisions. The provisions in 40 CFR Part 96, Subpart AAAA (96.301 through 96.308), as amended through April 27, 2006, are adopted by reference, except that the definition of "permitting authority" in 96.302 shall mean the department of natural resources. Other terms contained in rules 567—34.221(455B) through 567—34.229(455B), and in Tables 2A and 2B, shall have the meanings set forth in 96.302.

567—34.222(455B) CAIR designated representative for CAIR NO_x ozone season sources. The provisions in 40 CFR Part 96, Subpart BBBB, as amended through April 27, 2006, are adopted by reference.

567—34.223(455B) CAIR NO_x ozone season permits. The provisions in 40 CFR Part 96, Subpart CCCC, as amended through April 27, 2006, are adopted by reference.

567—34.224 Reserved.

567—34.225(455B) CAIR NO_x ozone season allowance allocations. These provisions in 40 CFR Part 96, Subpart EEEE, 96.341, as amended through April 27, 2006, are adopted by reference, except as indicated in this rule.

34.225(1) State trading budget. The provisions in 40 CFR 96.340 are not adopted by reference. The state's trading budget for annual allocations of CAIR NO_x ozone season allowances for each control period from 2009 through 2014 is 14,263 tons. The state's trading

budget for annual allocations of CAIR NO_x ozone season allowances for each control period, starting in 2015, and for each control period thereafter, is 11,886 tons.

34.225(2) CAIR NO_x ozone season allowance allocations. The provisions in 40 CFR 96.342 are not adopted by reference. The provisions in this subrule for CAIR NO_x ozone season allowance allocations are adopted in lieu thereof.

a. The baseline heat input used with respect to CAIR NO_x ozone season allowance allocations under paragraph "b" of this subrule for each CAIR NO_x ozone season unit will be:

(1) For units commencing operation before January 1, 2001 (existing units), the average of the three highest amounts of the units' adjusted control period heat input (in mmBTU) for the five month period from May 1 through September 30 (ozone season) for 2000 through 2004, with the adjusted control period heat inputs for each year calculated as follows:

1. If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 100 percent;

2. If the unit is oil-fired during the year, the unit's control period heat input for such year is multiplied by 60 percent; and

3. If numbered paragraphs "1" and "2" are not applicable to the unit, the unit's control period heat input for such year is multiplied by 40 percent.

(2) For units commencing operation on or after January 1, 2001 and commencing construction before January 1, 2006 (new units), the nameplate capacity of the generator being served, provided that if a generator is served by two or more units, then the nameplate capacity will be attributed to each unit in equal fraction of the total nameplate capacity, multiplied by:

1. 7900 BTU/kW, if the unit is coal-fired for the year; or

2. 6675 BTU/kW, if the unit is not coal-fired for the year.

b.(1) For each control period in 2009 and thereafter, but for no control period later than that control period required to meet the minimum timing requirements specified in 40 CFR 96.341(a) and 96.341(b), the department will allocate to all CAIR NO_x units with an ozone season baseline heat input as determined in subparagraph "a"(1) for existing units a total amount of CAIR NO_x ozone season allowances equal to 95 percent for each control period from 2009 through 2014, and 97 percent for each control period 2015 and thereafter, of the tons of NO_x ozone season emissions in the state trading budget specified in subrule 34.225(1).

(2) The department will allocate CAIR NO_x ozone season allowances to each CAIR NO_x ozone season unit under subparagraph "b"(1) for existing units in an amount determined by multiplying the total amount of CAIR NO_x allowances allocated under subparagraph "b"(1) by the ratio of the ozone season baseline heat input of such a CAIR NO_x unit to the total amount of ozone season baseline heat input of all such CAIR NO_x ozone season units and rounding to the nearest whole allowance as appropriate.

c.(1) For each control period in 2009 and thereafter, but for no control period later than is required to meet the minimum timing requirements set forth in 40 CFR 96.341(a) and 96.341(b), the department will allocate to all CAIR NO_x ozone season units with an ozone season baseline heat input as determined in subparagraph "a"(2) for new units a total amount of CAIR NO_x ozone season allowances equal to 5 percent for each control period from 2009 through 2014, and 3 percent for each control period in 2015 and thereafter, of the tons of NOx ozone season emissions in the state trading budget as specified in subrule 34.225(1).

(2) The department will allocate CAIR NO_x ozone season allowances to each CAIR NO_x ozone season unit under subparagraph "c"(1) for new units in an amount determined by multiplying the total amount of CAIR NO_x ozone season allowances allocated under

subparagraph "c"(1) by the ratio of the ozone season baseline heat input of such a CAIR NO_x ozone season unit to the total amount of ozone season baseline heat input of all such CAIR NO_x units and rounding to the nearest whole allowance as appropriate.

d. The unit allocations of CAIR NO_x ozone season allowances described in subparagraphs "b"(2) and "c"(2) are set forth in Tables 2A and 2B. Upon allocation, allowances may be tracked, transferred, banked and recorded as specified under 40 CFR 96.350 through 96.362, as amended through April 27, 2006.

Table 2A. Ozone Season NO_x Allocations for Existing Units in Tons Per Year

Facility ID	County	Unit ID	2009 – 2014	2015 and thereafter
Ames	Story	7	54	46
Ames	Story	8	158	134
Burlington Generating Station	Des Moines	1	549	467
Cedar Falls Gas Turbine	Black Hawk	1	0	0
Cedar Falls Gas Turbine	Black Hawk	2	4	3
Council Bluffs Energy Center	Pottawattamie	1	133	114
Council Bluffs Energy Center	Pottawattamie	2	191	163
Council Bluffs Energy Center	Pottawattamie	3	1822	1550
Dubuque Generation Station	Dubuque	1	104	88
Dubuque Generation Station	Dubuque	5	66	56
Dubuque Generation Station	Dubuque	6	14	12
Earl F Wisdom Generation Station	Clay	1	32	27
Electrifarm Turbines	Black Hawk	GT1	6	5
Electrifarm Turbines	Black Hawk	GT2	7	6
Electrifarm Turbines	Black Hawk	GT3	6	5
Fair Station	Muscatine	2	92	79
George Neal North	Woodbury	1	331	281
George Neal North	Woodbury	2	603	513
George Neal North	Woodbury	3	1189	1012
George Neal South	Woodbury	4	1522	1295
Lansing Generating Station	Allamakee	1	4	3
Lansing Generating Station	Allamakee	2	6	5
Lansing Generating Station	Allamakee	3	77	66
Lansing Generating Station	Allamakee	4	495	421
Lime Creek Combustion Turbines Station	Cerro Gordo	**1	2	2
Lime Creek Combustion Turbines Station	Cerro Gordo	**2	2	1
Louisa Station	Muscatine	101	1632	1389
Marshalltown	Marshall	**1	3	2
Marshalltown	Marshall	**2	3	2
Marshalltown	Marshall	**3	3	2
Milton L Kapp Generating Station	Clinton	2	486	414
Muscatine	Muscatine	8	201	171
Muscatine	Muscatine	9	441	375
North Centerville Combustion Turbines	Appanoose	**1	1	1
North Centerville Combustion Turbines	Appanoose	**2	1	1

Ottumwa Generating Station	Wapello	1	1761	1498
Pella Station	Marion	6	28	24
Pella Station	Marion	7	35	30
Pella Station	Marion	8	0	0
Pleasant Hill	Polk	GT1	1	1
Pleasant Hill	Polk	GT2	1	1
Pleasant Hill	Polk	GT3	2	2
Prairie Creek Generating Station	Linn	3	134	114
Prairie Creek Generating Station	Linn	4	366	312
Riverside Station	Scott	9	252	214
Sixth Street Generating Station	Linn	2	54	46
Sixth Street Generating Station	Linn	3	52	44
Sixth Street Generating Station	Linn	4	44	38
Sixth Street Generating Station	Linn	5	83	71
Streeter Station	Black Hawk	7	40	34
Summit Lake Facility	Union	1G	4	3
Summit Lake Facility	Union	2G	5	4
Sutherland Generating Station	Marshall	1	95	81
Sutherland Generating Station	Marshall	2	94	80
Sutherland Generating Station	Marshall	3	245	209
Sycamore Turbines	Polk	GT1	6	5
Sycamore Turbines	Polk	GT2	8	7

**Denotes an affected unit for which the unit ID is unavailable.

Table 2B. Ozone Season NO_x Allocations for New Units in Tons Per Year

Facility ID	County	Unit ID	2009 – 2014	2015 and thereafter
Ames	Story	GT2	22	11
Council Bluffs Energy Center	Pottawattamie	4	311	155
Earl F Wisdom Generation Station	Clay	2	32	16
Emery Station	Cerro Gordo	11	57	29
Emery Station	Cerro Gordo	12	57	29
Emery Station	Cerro Gordo	13	81	41
Exira Station	Audubon	CT U–1	16	8
Exira Station	Audubon	CT U–2	17	8
Greater Des Moines Energy Center	Polk	GT1	60	30
Greater Des Moines Energy Center	Polk	GT2	60	30

567—34.226(455B) CAIR NO_x ozone season allowance tracking system. The provisions in 40 CFR Part 96, Subpart FFFF, as amended through April 27, 2006, are adopted by reference.

567—34.227(455B) CAIR NO_x ozone season allowance transfers. The provisions in 40 CFR Part 96, Subpart GGGG, as amended through May 12, 2005, are adopted by reference.

567—34.228(455B) CAIR NO_x ozone season monitoring and reporting. The provisions in 40 CFR Part 96, Subpart HHHH, as amended through April 27, 2006, are adopted by reference.

567—34.229(455B) CAIR NO_x ozone season opt–in units. The provisions in 40 CFR Part 96, Subpart IIII, as amended through April 27, 2006, are adopted by reference.

These rules are intended to implement Iowa Code section 455B.133.

_____
Date

_____
Jeffrey R. Vonk, Director

Administrative Rule Fiscal Impact Statement

Date: 12/1/05

Agency: Department of Natural Resources
IAC Citation: 567 IAC 20.1, 21.4, 22.120 and Chapter 34 (455B).
Agency Contact: Anne Preziosi

Summary of the Rule: The proposed rules will adopt the federal Clean Air Interstate Rule (CAIR). The proposed rules will also make amendments to the Acid Rain program rules, to reflect changes in the federal rules to promulgate CAIR.

The U.S. Environmental Protection Agency (EPA) promulgated the CAIR provisions to address emissions of sulfur dioxide (SO_2) and nitrogen oxide (NO_x) from eastern and midwestern states, including Iowa, which were found to contribute to unhealthy levels of fine particulate matter and ozone in downwind states. Under CAIR, Iowa is required to meet EPA-prescribed emissions targets for SO2 and NOx emissions in two phases. The first phase occurs in 2009. The second phase occurs in 2015.

EPA determined that controlling SO_2 and NO_x emissions from fossil fuel fired electric generating units (EGUs) to meet CAIR emission goals was highly cost effective. As such, EPA provided two options for states to implement CAIR: 1) Adopt EPA "model" rules that require EGUs to participate in an EPA-administered, interstate emissions cap and trade program, or 2) Meet individual state emissions budgets through other control measures. The Department convened a stakeholder workgroup to discuss the CAIR implementation options. After considering the workgroup recommendations, the Department is proposing to adopt EPA's cap and trade program.

Under the cap and trade approach for CAIR, EPA allocates emissions allowance budgets to the state for NOx emissions. CAIR SO_2 allowances are allocated by EPA to affected EGUs from the current allowances under the existing Acid Rain program. The state is responsible for allocating the initial NO_x allowances to CAIR-affected facilities. Each allowance is equal to one ton of emissions. Upon initial allocation of NO_x and SO_2 allowances, EGUs can then trade them through an EPA-managed trading program. Market forces determine the trade currency (allowance) values. At the end of each year, each affected EGU must hold one allowance for each ton of SO_2 or NO_x emitted. EGUs may comply with this requirement through some combination of securing allowances or reducing emissions.

Fill in this box if the impact meets these criteria:

___ No Fiscal Impact to the State.
_x_ Fiscal Impact of less than $100,000 annually or $500,000 over 5 years.
__ Fiscal Impact cannot be determined.

Brief Explanation:
EPA has indicated that it may reduce the federal 105 grant money to states that participate in EPA's trading program to partially defer the costs of EPA running the program. EPA estimates that, for Iowa, this reduction may be roughly $35,000, starting in FFY 2008 (Oct. 1, 2007). This expense supports the centralized management of an interstate cap and trade program, which is the most cost efficient to the Department and to the regulated community.

Most of the CAIR-affected EGUs are currently Title V facilities. These facilities pay Title V fees based on tons of actual pollutants emitted. The Department sets the dollar per ton fee, each year, based on the previous year's reported emissions, and the expected Department budget.

The department may begin to see the effects of implementation of the cap and trade program on the Title V fees as early as SFY 2008. These effects will be variable, and based on the regulated community's choice to comply with the rule provisions by either purchasing emissions allowances or installing pollution control equipment to reduce NO_x and SO_2 emissions. Installation of pollution of control equipment could result in a reduction in the number of tons subject to Title V fees. The department will maintain revenue levels sufficient to cover all reasonable costs to administer the Title V program by adjusting the Title V fee.

Fill in the form below if the impact does not fit the criteria above:

___ Fiscal Impact of $100,000 annually or $500,000 over 5 years.
* Fill in the rest of the Fiscal Impact Statement form.

Assumptions:

Describe how estimates were derived:

Estimated Impact to the State by Fiscal Year

	Year 1 (FY ___)	Year 2 (FY ___)
Revenue by Each Source:		
GENERAL FUND		
FEDERAL FUNDS		
Other (specify)		
TOTAL REVENUE		
Expenditures:		
GENERAL FUND		
FEDERAL FUNDS		
Other (specify)		

TOTAL EXPENDITURES

NET IMPACT

_x_ This rule is required by State law or Federal mandate.
Please identify the state or federal law:

These rules implement Clean Air Act Section 110, as codified in 40 Code of Federal Regulations (CFR) Parts 51, 72, 73, 74, 77, 78 and 96. States must adopt rules and submit to EPA a State Implementation Plan (SIP) to implement CAIR by September 2006. The federal CAIR rules specify that states adopting EPA's cap and trade program will have "automatic approval" of their SIPs. EPA has stated that if states do not adopt state CAIR rules into their SIPs by the required deadline, EPA will impose a Federal Implementation Plan (FIP), which will be EPA's cap and trade program.

___ Funding has been provided for the rule change.
Please identify the amount provided and the funding source:

_x_ Funding has not been provided for the rule.
Please explain how the agency will pay for the rule change:

The Department expects to implement the provisions of CAIR with existing revenues.

Fiscal impact to persons affected by the rule:

The proposed CAIR rules will primarily affect two groups of the regulated public: 1) Facilities with EGUs, and 2) Other facilities subject to the Title V Operating permit program.

1) EGUs subject to provisions of CAIR

The NO_x and SO_2 cap and trade provisions of CAIR are expected to impact approximately 25 utilities in the state with affected EGUs. These utilities include a mix of investor-owned utilities and cooperative utilities.

EPA determined that achieving the required NO_x and SO_2 reductions by controlling emissions from EGUs through a cap and trade program was highly cost effective. The total, annual cost for all of Iowa's EGUs to comply with the CAIR cap and trade program, beginning in 2009, is estimated at approximately $252 million. However, EPA provides Iowa the option to defer approximately $112 million of this annual cost by issuing emissions allowances to affected EGUs. The Department is proposing this option, and will distribute EPA's allowances to affected EGUs at no cost. As such, the total, annual cost to affected EGUs to comply with the EPA-determined SO_2 and NO_x targets is estimated at $140 million. EPA will reduce the number of available allowances in 2015, at which time the total, annual cost to Iowa EGUs for compliance is estimated at $169 million.

It is expected that some facilities will achieve the required emission targets by installing control equipment. A recent construction permit application from a facility with a medium to large coal-fired EGU estimated the one-time capital cost of a scrubber for SO_2 control at approximately $96 million. Annual operation and maintenance costs were estimated at $27 million.

EGUs will also have costs associated with continuous emissions monitoring for CAIR. However, many of the affected facilities are already conducting monitoring under the Acid Rain program which is considered to be sufficient under CAIR.

2) All Title V facilities

As noted above, the CAIR emissions targets for SO_2 and NO_x could result in increased Title V fees, beginning in SFY 2008. Because of the many factors influencing emissions from all Title V sources, it is difficult, if not impossible, to determine the impact to Title V fees. Assuming emissions from non-EGU, Title V facilities stayed the same, and assuming some SO_2 and NO_x control from EGUs, the cost to all Title V fee payers is conservatively estimated to increase by 14% above current levels. This estimated 14% increase in fees is considered to be the highest, potential increase that would occur over the next five to eight years.

The emissions inventory provisions of CAIR require Title V major sources to annually report all NO_x and SO_2 emissions. These affected sources are already required to report NO_x and SO_2 emissions annually under Title V rules. However, the CAIR provisions require more detailed recordkeeping and reporting.

Fiscal impact to Counties or other Local Governments (required by Iowa Code 25B.6):

Four municipal utilities in the state are affected by the CAIR NO_x and SO_2 emission targets for EGUs. These municipals are impacted in the same manner as outlined above for investor-owned and cooperative utilities. The total, annual cost for all four affected municipals to comply with the CAIR cap and trade program, beginning in 2009, is estimated at approximately $18 million. However, EPA provides Iowa the option to defer approximately $8 million of this annual cost by issuing emissions allowances to affected municipals. The Department is proposing this option, and will distribute EPA's allowances to affected municipals at no cost. The total, annual cost of compliance to these municipals, beginning in 2009, is estimated at approximately $10 million. This cost will increase to approximately $12 million in 2015 when the SO_2 and NO_x emission targets are reduced. This estimate does not include any capital or annual costs for emission control, or any additional costs for continuous emissions monitoring.

All four of the affected municipals are Title V facilities. As such, they may experience an increase in Title V fees, beginning in SFY 2008. As noted above, Title V emissions are dependent upon a large number of factors. If the Title V fees increase due to decreased SO_2 and NO_x emissions from EGUs, the Department expects no more than a 14% increase above current fee levels. As noted above, the estimated 14% increase in fees is considered to be the highest, potential increase that would occur over the next five to eight years.

These municipals will also be subject to the recordkeeping and reporting required under the CAIR emissions inventory provisions.

* If additional explanation is needed, please attach extra pages.

Agency Representative preparing estimate: Chad Daniel
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PUBLIC PARTICIPATION RESPONSIVENESS SUMMARY

FOR

567 Iowa Administrative Code Chapter 20, "Scope of Title—Definitions—Forms—Rules of Practice," Chapter 21, "Compliance," Chapter 22, "Controlling Pollution," and new Chapter 34, "Provisions for Air Quality Emissions Trading Programs," [adoption of the Clean Air Interstate Rule (CAIR)]

Introduction

The Notice of Intended Action was published in the Iowa Administrative Bulletin (IAB) on January 18, 2006, as ARC 4823B. Two public hearings were held, one on February 21, 2006 and a second on February 22, 2006. Two comments were received at the public hearing on February 21. No comments were received at the hearing on February 22. Five written comments were submitted prior to the close of the public comment period. The public comment period closed on February 27, 2006. A transcript of the oral comments and copies of the written comments are attached. The Department's responses to the comments are below.

Public Comment #1

Submitted orally by Jim Klosterbuer of Alliant Energy, Cedar Rapids, Iowa.

The commenter noted that he was a member of the original workgroup formed to provide recommendations to the Department on how to implement CAIR in Iowa. He complimented the Department for forming this group, and stated that he thinks this is a good way to come up with rules to implement in the state that work best for the companies in the state.

Department Response

No response needed.

Recommended Action

No action recommended.

Public Comment #2

Submitted orally from Alan Arnold of Alliant Energy, representing Interstate Power and Light Company, a utility subsidiary of Alliant Energy, Cedar Rapids, Iowa.

The commenter wanted to reiterate the comments from Mr. Klosterbuer regarding Alliant's acceptance of the workgroup to come up with acceptable rulemaking activities that they feel will be a viable method for ensuring compliance with CAIR and the Clean Air Mercury Rule (CAMR) in Iowa. Mr. Arnold submitted a formal comment letter to the DNR reflecting the company's position.

Department Response

No response needed.

Recommended action
No action recommended.

Public Comment #3

Submitted in writing by Alan J. Arnold, Senior Environmental Specialist, Alliant Energy, representing Interstate Power and Light Company, Cedar Rapids, Iowa.

The commenter noted that Interstate Power and Light (IPL) was an invited party to the Department's workgroup. The commenter stated that IPL believes the rules being proposed are well crafted and will lead to effective implementation of the federal CAIR and CAMR rules in Iowa. Further, by adopting the cap and trade approach to CAIR and CAMR, it offers flexibility to determine the most appropriate method of compliance. The comments concluded by stating the IPL supports the current CAIR and CAMR rules as proposed by the Department.

Department's Response
No response needed.

Recommended Action
No action needed.

Public Comment #4

Submitted in writing by Deborah Birgen, Legislative Associate, Missouri River Energy Services, Sioux Falls, South Dakota.

The commenter explained that Missouri River Energy Services (MRES) is a joint action agency comprised of 59 municipally owned electric utilities in the states of Iowa, Minnesota, North Dakota and South Dakota. Eighteen of those members are located in the state of Iowa.

The commenter stated that MRES supports the Commission in adopting the cap and trade approach for CAIR. The commenter further stated that the cap and trade approach will allow MRES the flexibility to operate its existing facility and to operate the proposed expansion to Exira in a sound and reliable manner while still complying with the requirements of CAIR under Iowa's implementation plan.

The commenter stated that the Department's annual and ozone season NO_x allowance allocations for new units, as allotted to the Exira station, is appropriate.

Department Response
No response needed.

Recommended Action
No action needed.

Public Comment #5

Provided in writing, by electronic mail, by Charles Winterwood, Air Quality Chair, Sierra Club, Iowa Chapter, Dubuque, Iowa.

The commenter provided an explanation of the Sierra Club's position on trading, including a list of conditions that must apply to trading programs. The commenter did not provide specific recommendations regarding the CAIR or CAMR notices.

The comments included an introductory statement describing the overall process that must be in place for a trading program, including full public notice, disclosure, participation, oversight, accountability, verification, and effective enforcement, with rights of appeal for affected citizens and administrative and judicial remedies. This statement was followed by a list of conditions that the commenter stated must apply for any trading program.

The commenter provided a second list of circumstances which should not occur in any trading program. This list included

- Violation of ambient standards, expanded pollution at grandfathered sites, significant deterioration of soils, air, water and ecosystems;
- Increased release of toxics at the point of release, such as heavy metals, neurotoxins, carcinogens, mutagens or bioaccumulative agents;
- Backsliding on pollution control obligations;
- Build up of pollution in nonattainment areas;
- Monopolization of allowances;
- Trading in communities that disapprove of trades; and
- Disproportionate burden on communities already burdened by toxics.

Department Response

In response to the commenter's introductory statement, the Department has followed all administrative rulemaking procedures for the adoption of CAIR, which included full disclosure to the public and the opportunity to participate in the rulemaking process through a public comment period and two public hearings. Provisions that include oversight, accountability, verification, and effective enforcement are all included in the federal CAIR rules. Rights of appeal for affected citizens and the ability of the state to use administrative and judicial remedies, where and when necessary, will not change under these rules.

As noted in the preamble of the rule, the Department formed a workgroup prior to proposing these rules. The workgroup invitees included a diverse group of stakeholders. All presentations and workgroup activities were posted on the Department's Air Quality website. The workgroup met five times, and made a number of recommendations to the Department. The Department has carefully considered all workgroup recommendations and public comments in adopting these rules.

With regard to the commenter’s list of conditions that must apply for any emissions trading program, the Department is limited to the flexibility provided for in the cap and trade approach to implementing CAIR. By choosing the cap and trade approach, the Department is required to

implement all components of EPA's cap and trade program within the confines of the flexibility provided by EPA.

Further, the specific purpose of CAIR is to provide a mechanism for achieving regional and national reductions in NO_x and SO_2, as mentioned in the commenter's list. The EPA cap and trade program also achieves some of the other conditions in the commenter's list. For example, the cap and trade approach to CAIR does include automatic and punitive penalties for CAIR units that do not have the required number of allowances to cover emissions. However, CAIR was not designed or intended to achieve many of the goals the commenter included in his list.

The Department's response to the commenter's list of conditions that may not occur in any trading program is as follows:

- **Violation of ambient standards:** CAIR does not supersede the requirement for sources of air pollution to meet the National Ambient Air Quality Standards (NAAQS) for all pollutants. Existing permitting programs designed to protect the NAAQS remain in effect and fully enforceable.

- **Expanded pollution at grandfathered sites:** Grandfathered sources of pollution are already exempted from many Clean Air Act requirements, regardless of CAIR. However, any physical or operational change at such a source would require that the proposed modification be reviewed prior to issuance of an air construction permit.

- **Significant deterioration of soils, air, water and ecosystems:** The Department's existing, federally approved Prevention of Significant Deterioration (PSD) program is not negated in any way by CAIR. PSD requires an analysis of impacts to soils, vegetation and ecosystems. Any facility that is a major source of air pollutants must comply with all PSD review and pollution control requirements.

- **Increased release of toxics at the point of release, such as heavy metals, neurotoxins, carcinogens, mutagens or bioaccumulative agents:** The CAIR regulations are only applicable to NO_x and SO_2 emissions. CAIR does not regulate heavy metals or other air toxics. All regulations regarding the emissions and control of air toxics remain applicable and will continue to be implemented.

- **Backsliding on pollution control obligations:** As noted above, all existing pollution control and permitting requirements for NO_x and SO_2 will remain in effect. Therefore, there will be no backsliding on pollution control obligations.

- **Build up of pollution in nonattainment areas:** CAIR is specifically designed to reduce pollution in downwind nonattainment areas. Although not all nonattainment areas will come back into attainment solely due to CAIR, there will not be an increase in nonattainment due to CAIR. Further, Iowa has no nonattainment areas at this time.

- **Monopolization of allowances:** Under the CAIR cap and trade program, allowances are allocated annually to all sources. Excess allowances are traded through a centralized

market. Operation of the cap and trade program in this manner prevents monopolization of allowances.

- **Trading in communities that disapprove of trades:** Allocation of allowances is done at a state, rather than community level. Additional allowances are available in a national market system. Local limits on allowance trading are not provided for in the federal program. Iowa statute also prohibits state rules from being more stringent than federal rules.

- **Disproportionate burden on communities already burdened by toxics:**. The cap and trade program is intended to decrease emissions of the air pollutants NO_x and SO_2, in an effort to mitigate downwind nonattainment areas for the criteria pollutants ozone and fine particulate. As such, CAIR was not intended to address existing air toxics problems.

In summary, the Department must implement cap and trade within the confines required under EPA's CAIR cap and trade rules and under current state statute. Many other air pollution review and control requirements limit NO_x and SO_2 emissions from the sources that will be included in the cap and trade program. These requirements will not change as a result of these sources participating in the cap and trade program. Continued implementation of these requirements will ensure that areas in attainment of the NAAQS remain in attainment under the cap and trade program.

Recommended Action
No action recommended.

Public Comment #6

Provided in writing, by Neila Seaman, Director, Charles Winterwood, Air Quality Chair, and Steve Veysey, Water Quality Chair, of the Sierra Club, Iowa Chapter, Des Moines, Iowa.

The commenter provided comments opposing both the CAIR and CAMR rules. Most of the comments in the commenter's letter were directed at CAMR. However, the commenter stated that the Sierra Club is opposed to CAIR because it does not achieve reductions to restore clean air in a timely manner, since the bulk of the CAIR reductions to do occur until 2015.

Department response
The commenter did not provide information on what would be considered "timely," as opposed to the CAIR deadlines of 2009 and 2015. EPA's CAIR analysis concluded that the current CAIR timeline was appropriate. In addition, the Department may not impose stricter timelines for CAIR reductions than is specified in the federal regulations. Iowa statute prevents the state rules from being more stringent than federal regulations.

Recommended action
No action recommended.

Public Comment #7

Provided in writing, via electronic mail, by Michael Jay, U.S. Environmental Protection Agency Region 7, Air RCRA, Toxics Division, Air Planning and Development Branch, Kansas City, Kansas.

The commenter provides four areas of public comment applicable to both the CAIR and CAMR notices.

1) The first comment questioned whether or not the Department should be using the effective date of the federal regulations for CAIR, rather than the Federal Register promulgation date, when adopting federal regulations by reference into the Iowa Administrative Code (IAC). The comment also noted that EPA has proposed amendments to the federal CAIR regulations, which could affect the Department's rules.

2) The second comment pointed out a discrepancy between the federal Acid Rain definition for "tonnage," contained in 40 CFR Part 72, and the proposed definition.

3) The third comment pointed out an inconsistency in the Department's intent to classify units as "new" and "existing" in the allocation tables, and the fact that the proposed rules include adoption of a portion of the federal regulations that specifies how "new units" automatically become "existing units" at a later date.

4) The fourth area of comment pertained to Iowa's allowance allocations. The commenter pointed out that the EPA, as manager of the trading program, could elect to record the allowances specified in the Department's proposed allowance tables indefinitely into the future, rather than just the minimum amount of time required under the federal regulations. This pertains to a possible future change in a section of the federal regulations that specifies how many years in advance that EPA will record allocations.

EPA Region VII provided follow-up to the public comments above in subsequent e-mail messages transmitted to the Department on April 10 and April 11, 2006. A summary of these comments are as follows:

5) EPA provided additional follow-up to comment #1 above. EPA suggested exchanging the term "amended through" for federal regulation adoptions with the term "published on," or, alternatively, that the Department address the issue in its response to comments. EPA stated that, when federal regulations are published in the Federal Register (FR), the Code of Federal Regulations (CFR) is not actually amended on the FR publication date. The CFR is not officially "amended" until the effective date noted in the Federal Register, which is typically 30 or 60 days after the Federal Register publication date.

6) EPA noted that 40 CFR Part 76 was not amended with the CAIR promulgation and Acid Rain program amendments on May 15, 2005, or in the subsequent federal CAIR/Acid Rain amendments on April 27, 2006.

Department response

1) **Federal rule promulgation versus effective date:** Adoption by reference of federal regulations into state rules must have a federal rule promulgation date. Since this is an adoption by reference, the effective date of the federal regulation is also adopted. State rules clearly state the federal regulation citation, followed by "as adopted or amended through [Federal Register promulgation date]." In some cases, if the state is not required to adopt federal regulations until a date later than the promulgation date, the Department will also include an effective date in the rule published in the Iowa Administrative Code. With regard to federally proposed changes to CAIR, the Department cannot make state rule changes until the federal amendments are final. At such time, the Department shall undertake rulemaking to make any necessary changes to state rules.

2) **Definition of tonnage:** The Department inadvertently published an incorrect definition of tonnage in the Notice. The definition should be identical to the federal definition.

3) **Inconsistency in classifying "new" and "existing" CAIR units:** The Department inadvertently included a portion of the federal rules for adoption that is not consistent with the Department's plans to characterize new and existing units. The federal language describing how a new unit automatically becomes an existing unit at a later date should be excluded, and clarifying language should be added to the state rules.

4) **Allocations and timing of EPA recordation:** It is the Department's understanding that EPA will only record allowances specified in the time periods in the federal regulations. However, the Department has since learned that EPA may change the federal timing for recordation. It is the Department's intent to only allocate allowances for the minimum control period (year) specified under the federal regulations, not for any additional control periods (years) into the future. The Department agrees that this intent should be clarified in the final rules.

5) **Adoption of federal regulations and amendment dates:** Whenever the Department refers to a federal regulation in the Iowa Administrative Code, the Department is acting on power that has been delegated to the Department by the Iowa Legislature. The Department must be careful not to "re-delegate" to EPA by not clearly understanding (and making the public understand) the version of the federal regulations that the Department intends to use.

   If the Department refers to a date when the federal regulations becomes effective, rather than a date of publication in the Federal Register, the Department is failing to provide the public with a clear understanding of what version of the federal regulations are being adopted into the Department's rules. The Department wants the public to be able to take the date from the "as amended through" phrase in the rule, and find a corresponding Federal Register notice that allows the public to understand what the state rule intends.

If the Department instead uses the language "as published on (date)" rather than "as amended through (date)," the Department will fail to convey that the Department is adopting by reference the federal regulations as **amended** through a certain date. It is correct to state that the Department is adopting by reference federal regulations as they have been **amended** through a date that is prior to their effective date, because regulations are amended before they **then** become effective.

Since an amendment is the official act of the agency (the EPA), it is appropriate for Department to use the Federal Register publication of that official EPA act as the date to describe the federal regulation to which the Department refers. Although the federal regulations are not effective on the date of final publication, it is not reasonable to expect the public to count backwards from an effective date to find a federal register publication. A member of the public would not necessarily know how far to count back. The Department's legal staff has, in the past, consulted the state's Legislative Services Agency (LSA) legal staff about this particular subject. The LSA legal staff has been satisfied that the use of the phrase "as amended through" is sufficient to clearly designate the version of the federal regulations to which the Department refers.

6) **Amendment date for 40 CFR Part 76:** The Department agrees that the date indicated in the Notice is incorrect, and that the federal amendment date should be corrected.

Recommended action

- No action recommended in response to EPA's comments regarding the Department's adoption by reference of federal regulations, and the appropriate use of federal amendment dates, publication dates, and effective dates. The Department intends to continue its practice of using the language "as amended through (date)" when referring to federal regulations in the Iowa Administrative Code.

- The Department will correct the definition for "tonnage" to be consistent with the current definition in the IAC, and to be consistent with the federal definition in 40 CFR Part 72.

- The Department will add clarifying language to the state rules to make clear that "new units" for CAIR annual NO_x and ozone season NO_x remain "new units," and will not be automatically classified as "existing units" at a later date. However, it should be noted that any interested party could petition the Department for rulemaking that would potentially allow this.

- The Department will add clarifying language to the state rules to make clear that annual NO_x and ozone season NO_x allowances will be allocated to a control period (year) in the future only to the minimum timing requirements specified under the federal regulations.

- The Department will correct the federal amendment date for 40 CFR Part 76.